

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 5615 of 2021 (O&M)
Date of Decision: 20.04.2021**

Bhupinder Kaur and others

..... Petitioners

Versus

Assets Reconstruction Company (India) Limited,
Ludhiana, Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Puneet Singla, Advocate
for the petitioners.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

The three (03) petitioners, namely, *Bhupinder Kaur, Sarabjeet Singh* and *Jaspreet Singh*, who are members of one family, have filed the present writ petition seeking quashing of alleged *ex parte* order dated 09.02.2021 (**Annexure P-1**) passed by respondent No. 4 – Additional District Magistrate, Ludhiana, whereby it has directed the Tehsildar, Ludhiana to take physical possession of the mortgaged residential house under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “SARFAESI Act, 2002”).

[2] It is submitted by the counsel for petitioners that originally the loan was taken by *Gurdeep Singh* (deceased son of petitioner Nos. 1 & 2 and brother of petitioner No. 3), who committed suicide on account of non-payment of loan amount to private respondent Nos. 2 & 3, as he was

pressurized by these respondents to clear the amount due. Therefore, it is

argued that the business for which loan was taken has since closed down, and thus the petitioners are ready to settle the accounts with company and arrange the outstanding amount.

[3] We have heard learned counsel for petitioners and have perused the paper book. However, we are of the view that present petition is liable to be dismissed.

[3.1] A perusal of the pleadings reveal that contradictory assertions have been raised by petitioners in their writ petition *vis-à-vis* the actual borrowers. However, it is not disputed by them that petitioner Nos. 1 & 3 are the principal borrowers and petitioner No. 2 is the guarantor, who had originally taken a loan of ₹ 19,70,000/- from Shriram Housing Finance Limited – respondent No. 3. It is further not in dispute that respondent No. 2 – Assets Reconstruction Company (India) Limited, took over from respondent No. 3 and initiated proceedings under 13 (2) of SARFAESI Act, 2002 by sending a notice under Section 13 (2) of SARFAESI Act, 2002 on 23.03.2019. Consequently, respondent No. 2 had initiated proceedings under various provisions of the SARFAESI Act, 2002 to recover the money, which was the only way with it to secure the lent amount. Once that it so, we do not see how the present petition is maintainable, as the petitioners expects us to interfere in the due process of law adopted by respondent No. 2. The petitioners, at best, have an alternative efficacious remedy to approach the Tribunal under the provisions of SARFAESI Act, 2002 which we are informed have not been availed till date.

[3.2] A similar issue, as raised in the present petition, has already been discussed in detail by us and decided on **22.03.2021** against petitioner

therein in *CWP No. 5010 of 2021*, titled “*M/s. Hamdard Engineering through its sole proprietor Harinder Singh, Amritsar Versus City Union Bank Limited, Amritsar and another*”, by relying upon a few Hon'ble Supreme Court judgments and have held that such a recourse of directly approaching the High Court without exhausting its statutory remedy before Debt Recovery Tribunal is not permissible, unless it is shown to us as to :

(i) why approaching the Debt Recovery Tribunal is not an efficacious remedy; (ii) or such travesty of justice has been done to them which entails petitioners to approach this Court directly by superseding the statutory process; (iii) or there is such an illegality in the procedure adopted by the respondent-Bank which would compel us to invoke the extraordinary writ jurisdiction.

[3.3] None of the afore-referred three situations have been brought to our notice, which would compel us to exercise our jurisdiction under Article 226 of the Constitution of India.

[4] In view of the above, finding no merit, present **petition** is hereby ordered to be **dismissed**.

(JASWANT SINGH)
JUDGE

April 20, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes